Calendar No. 321

99TH CONGRESS *1st Session*	SENATE	REPORT 99-143

NUCLEAR POWERPLANT SECURITY AND ANTI-TERRORISM ACT OF 1985

REPORT

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ON

S. 274, AS AMENDED

SEPTEMBER 26 (legislative day, SEPTEMBER 23), 1985.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

51-010 O WASHINGTON : 1985

S523-6

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Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 274, as amended]

The Committee on the Judiciary to which was referred the bill (S. 274), to provide for the national security by allowing access to certain Federal criminal history records, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

I. PURPOSE

The purpose of the proposed Nuclear Power Plant Security and Anti-terrorism Act is to provide for the national security by granting nuclear power reactor licensees access to the national criminal history files of the Federal Bureau of Investigation. By creating a mechanism to conduct a background investigation on any individual having unescorted access to a nuclear power facility, the bill will help to ensure that only individuals who are reliable and trustworthy have access to critically sensitive areas thereby significantly improving the security of that nuclear power facility.

II. STATEMENT

Currently, most background checks by nuclear power reactor licensees are limited to State and local files. Unfortunately, those files do not include information about an individual's criminal record, if any, in other parts of the country. By allowing nuclear power reactor operators to have access to the FBI's criminal history records files, they would be able to obtain more complete criminal histories. That information is an essential element in the determination of who should be granted unescorted access to nuclear facilities.

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The Nuclear Regulatory Commission (the Commission) advises that there are 85 U.S. nuclear reactor plants that produce and are licensed for full power. There are five that are licensed for fuel loading and low power. These facilities currently produce approximately 13 percent of all U.S. electrical power. As of December 1984, 37 additional plants had been granted construction permits. When those plants become operational, nuclear power will provide approximately 25 percent of all U.S. electrical power. Although increasingly vital for energy, nuclear facilities can also present a grave danger to the environment and to human life if they are not managed properly.

The Commission has investigated more than a dozen incidents of suspected sabotage by plant employees. The incidents involved critical valves in the wrong position, miswired electrical equipment, and other problem areas. A Commission report indicated that between 1974 and 1982 there had been 32 possible deliberate acts of damage at 24 operating reactors and reactor construction sites, including the dozen reported since 1980.

Examples of incidents include instrument valves apparently deliberately mispositioned in a way that knocked out the steam generator feed-water pump thus forcing the operator to reduce power immediately to keep the reactor from going into emergency shutdown. That incident happened on May 1, 1982, at the Salem atomic power station in southern New Jersey. At the Beaver Valley plant near Pittsburgh, a valve normally left in an open position was found closed, and the chain and padlock that secured the valve in the open position were missing. With the valve closed, emergency cooling water would not have been available for high pressure injection into the core.

The Commission reported: "Since there were no indications of unauthorized entry to the sites of these incidents, they are thought to have involved insiders." A 1983 Commission memorandum concluded that: "The major threat of sabotage to a nuclear plant is associated with the insider." More stringent employee screening procedures might have prevented many incidents of that kind.

Currently, the FBI provides criminal history records checks only to government or private entities specifically authorized by statute. The FBI originally disseminated criminal history records to state, city and county officials if authorized by statute, ordinance, or rule for applicants for employment or for a permit or license, as well as for Federally insured banks. However in *Menard* v. *Mitchell,* 328 F. Supp. 718, 725–728 (D.D.C. 1971), rev'd. on other grounds, 498 F.2d 1017 (D.C. Cir. 1974), a U.S. District Court interpreted the statute which authorizes the FBI to collect criminal records (28 U.S.C. 534) as containing an implicit prohibition of dissemination to private entities and to State and local noncriminal justice agencies. The FBI, accordingly, amended its regulations to prohibit criminal history record dissemination to the general public or private sector employers, except in limited circumstances not relevant in this case.

The *Menard* decision has, however, been partially superseded. Congress, in Public Law 92–544, authorized the FBI to disseminate criminal history records to officials of federally chartered or insured banking institutions and to officials of State and local gov-

ernments for purposes of employment and licensing decisions, if authorized by State statute and approved by the Attorney General. Following Public Law 92-544, Congress also authorized dissemination to private entities engaged in certain securities transactions, such as brokerage houses (15 U.S.C. section 78(f)).

To prevent nuclear power facilities from becoming targets of terrorists, extortionists, or saboteurs, the licensees must be given access to the data contained in the criminal history files of the FBI.

The criminal history records contain full fingerprint identification cards for individuals who have been arrested by Federal, state or local authorities. It is important to note that identification of the person arrested is based on a full set of fingerprints rather than a name, social security number or other personal identifier. Currently, the FBI maintains over 22 million arrests records broken into 1,200 fingerprint classification codes.

Because these records are based on a full fingerprint identification, the FBI, by comparing fingerprints, can positively identify a record as belonging to a certain individual thereby ensuring that the person determining employment suitability does not attribute a criminal record to the wrong person. This procedure avoids problems which could occur if an unsophisticated noncriminal justice user of criminal record information undertook a criminal record check based on an individual's name and other identifiers. With a name check it is possible that a record could be attributed to the wrong person or, by merely using an alias, a criminal record might never be identified.

While the arrest data contained in these criminal history records is generally accurate, it is often incomplete. The FBI requires that law enforcement authorities submitting arrest data subsequently submit information concerning the disposition of the arrest. Despite this requirement, FBI experts have informed the Committee that this disposition data does not get forwarded to the FBI in close to 50 percent of the cases.[1]

Because of the incompleteness of this data, the Committee was faced with choosing between withholding from the Commission arrest data unaccompanied by disposition. This would protect the privacy and due process rights of prospective employees, but it would risk the failure to provide the operator important and relevant information concerning the prospective employee. Alternatively, the Committee could authorize the FBI to provide a complete arrest history record to the Commission, provided that the Commission institutes a program to protect the rights of prospective employees to correct and supplement the record and to limit the redissemination of the information supplied to the operator. After weighing the pros and cons of each approach, the Committee choose the latter course which is more fully outlined in the section-by-sesction analysis.

In written testimony endorsing S. 2470 (the 98th Congress version of S. 274) Herzel H. E. Plaine, General Counsel of the Nuclear Regulatory Commission, noted that the bill represented a means of

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[1] For a more complete discussion of the current status of criminal history records system, *see* "An Assessment Of Alternatives for a National Computerized Criminal History System," published by the Office of Technology Assessment (OTA-CIT-162, October, 1982).

facilitating nuclear reactor licensee efforts to obtain criminal history records, and of promoting uniformity in industry-conducted personnel screening programs.[2]

In testimony submitted to the Subcommittee on Security and Terrorism on June 13, 1985, Arthur E. Lundvall, vice president of the Baltimore Gas & Electric Co. and chairman of the Nuclear Power Executive Advisory Committee of the Edison Electric Institute, noted that:

> Nuclear powerplants have effective security programs that may include a system for psychological evaluation of potential employees and the conduct(ing) of a background investigation that involves limited State and local police record checks. This system would be significantly improved with the enactment of S. 2470 (S. 274) since it would provide a uniform system for background investigations throughout the industry.
>
> Each individual's complete criminal history will be reviewed and we can be assured that, to the maximum extent possible, only stable, reliable, and law-abiding people have unescorted access to vital areas of our nuclear powerplants.[3]

In testimony by David Hinman, manager of Corporate Security, Alabama Power Company, submitted to the Subcommittee on Security and Terrorism, Mr. Hinman expressed concern that the failure of the industry to obtain criminal history records based on fingerprint identification could permit terrorists, and would-be saboteurs an opportunity for employment at nuclear plants, using falsified birth records and other falsified credentials. Mr. Hinman concluded by endorsing S. 2470 (S. 274) and stating that it is imperative that access to such records be provided to assure that employment in sensitive positions be conducted based on full information as to the trustworthiness of the individual.[4]

S. 274, as amended, is endorsed by the Commission and the Department of Justice as indicated by the letters appearing in the Agency View Section.

III. History of the Legislation

Senator Jeremiah Denton (R-AL) introduced S. 2470 on March 22, 1984. The bill was referred to the Judiciary Committee, which on March 28, 1984, referred it to the Subcommittee on Security and Terrorism. On June 13, 1984, the Subcommittee conducted a hearing on the bill.

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[2] Prepared statement of Herzel H. E. Plaine, Office of the General Counsel, U.S. Nuclear Regulatory Commission, submitted to the Subcommittee on Security the Terrorism, during hearings on Legislative Initiatives to Curb Domestic and International Terrorism, (J-98-123, on June 13, 1984).

[3] Testimony of Arthur E. Lundvall, Vice President of the Baltimore Gas & Electric Company and Chairman of the Nuclear Power Executive Advisory Committee of the Edison Electric Institute, submitted to the Subcommittee on Security and Terrorism, during hearings on Legislative Initiatives to Curb Domestic and International Terrorism, (J-98-123, on June 13, 1984).

[4] Testimony of David Hinman, Manager of Corporate Security, Alabama Power Company, submitted to the Subcommittee on Security and Terrorism, during hearings on Legislative Initiatives to Curb Domestic and International Terrorism, (J-98-123, on June 13, 1984).

On January 24, 1985, Senator Denton reintroduced the bill as S. 274, incorporating certain suggestions offered by the Commission. S. 274 was referred to the Judiciary Committee and on to the Subcommittee on Security and Terrorism.

On July 23, 1985, The Subcommittee met in Executive Session to consider S. 274. During the mark-up a package of amendments was offered by Senator Denton and by Senator Patrick Leahy (D–VT) which incorporated into the bill a number of changes including certain suggestions by the Commission and the Department of Justice. The amendments were accepted unanimously, and the bill was reported to the full Committee by a similar 6–0 vote.

IV. Vote of the Committee

On September 12, 1985, the Committee on the Judiciary met in Executive Session, considered S. 274 and favorably approved it for reporting with amendments.

V. Text of S. 274 as Reported

A BILL To provide for the national security by allowing access to certain Federal criminal history records

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Nuclear Power Plant Security and Anti-terrorism Act of 1985".

FINDINGS

Sec. 2. The Congress finds that—

(1) the presence of nuclear power facilities, fuel cycle facilities, and nuclear materials in our society represents a potential and grave threat to our national security should terrorists gain access;

(2) the increasing threat of terrorism directed against the United States is greatly enhanced by insider access to nuclear power facilities and nuclear material; and

(3) the Department of Justice should assist in screening persons who have access to nuclear facilities and material, by providing criminal history record checks.

NATIONAL SECURITY ACCESS

Sec. 3. (a) The Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) is amended by adding after section 148 the following new section:

"Sec. 149. Fingerprinting for security clearance.—

"a. Every person in the process of being licensed or licensed pursuant to section 103 or 104b to operate a utilization facility shall require that each individual allowed unescorted access to the facility be fingerprinted. All fingerprints obtained by a licensee as required in the preceding sentence shall be submitted to the Attorney General of the United States through a person or persons designated by the Commission in consultation with the Attorney General for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee. Notwithstand-

ing any other provision of law, the Attorney General may provide all the results of the search to such person or persons as designated by the Commission in consultation with the Attorney General.

"b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its responsibilities to promote the common defense and security and to protect the health and safety of the public.

"c. For purposes of administering this section, the Commission shall prescribe regulations to—

"(1) implement procedures for the taking of fingerprints;

"(2) establish the conditions for use of information received from the Attorney General in order to—

"(A) limit the redissemination of such information; and

"(B) assure that such information is used solely for the purposes provided in this section; and

"(3) provide individuals subject to fingerprinting the right to complete and correct information contained in the criminal history records prior to any final adverse action.".

(b) The provisions of subsection a of section 149 of the Atomic Energy Act of 1954, as added by this Act, shall take effect upon promulgation of regulations by the Commission as set forth in subsection c of such section. Such regulations shall be promulgated on or before January 1, 1986.

(c) The table of contents at the beginning of such Act is amended by inserting after the item for section 148 the following new item:

"Sec. 149. Fingerprinting for security clearance.".

VI. Amendments

In the Subcommittee Senators Denton and Leahy offered a package of eight amendments (seven substantive and one technical).

AMENDMENT 1—SHORT TITLE CHANGE

The short title of the bill was changed from the "Anti-Nuclear Terrorism Act" to the "Nuclear Power Plant Security and Anti-terrorism Act" to reflect more accurately the purpose of the bill. The amendment was suggested by Senator Denton.

AMENDMENT 2—ROLE OF THE DEPARTMENT OF JUSTICE

The third finding was amended to clarify the role of the Department of Justice in assisting the Commission in screening persons who have access to nuclear facilities and material. The assistance will be in the form of providing criminal history record checks. The original bill listed the FBI as assisting the Commission without describing the form of assistance. The amendment was suggested by the Department of Justice.

AMENDMENT 3—LIMITATION OF INQUIRY

Section 3(a) was amended to clarify that the inquiry by the licensee will be submitted to the Attorney General as a request for the identification and arrest records only. The amendment re-

moved the broad term "appropriate processing." The amendment was suggested by DOJ.

AMENDMENT 4—COST OF PROCESSING THE CRIMINAL HISTORY INFORMATION

Section 3(a) was amended to clarify that the cost of processing the criminal history record check is to be borne by the licensee. The bill as originally introduced was silent as to the cost. The amendment was suggested by Senators Denton and Leahy.

AMENDMENT 5—AGENCY TO RECEIVE THE CRIMINAL HISTORY INFORMATION

Section 3(a) was amended to establish the channeling agency for receipt of the criminal history information. The bill already provided for the channeling agency for submission of the fingerprint cards. The amendment simply completed the loop. The amendment was suggested by DOJ.

AMENDMENT 6—COMMISSION'S AUTHORITY TO REGULATE

Section 3(a) was amended to require the Commission to promulgate, by regulation, implementing procedures for the taking of fingerprints, the use of the criminal history information, the redissemination of that information and the protection of the individuals fingerprinted. The amendment was suggested by the Commission and modified by Senators Denton and Leahy.

AMENDMENT 7—EFFECTIVE DATE

The amendment added a new section 3(b) which provides an effective date and a time for promulgation of regulations. The amendment was suggested by the Commission.

AMENDMENT 8—TECHNICAL

The amendment redesignates section 3(b) as 3(c) to accommodate the new section 3(b) added by amendment 7.

VII. Section-by-Section analysis

The bill provides for the national security by allowing access to certain Federal criminal history records. It adds a new section 149 to the Atomic Energy Act of 1954 (42 U.S.C. section 2011 et seq.) entitled "Fingerprinting for Security Clearance." The new section has three subsections.

Section 1 provides that the act may be cited as the "Nuclear Power Plant Security and Anti-terrorism Act."

Section 2 is a statement of findings and purpose of the Congress. It indicates that: (1) nuclear power facilities, if open to terrorist attacks, present a threat to our national security; (2) insider access to nuclear power facilities enhances the threat of terrorism against the United States, and (3) the Department of Justice should assist in screening persons having access to such facilities by providing criminal history checks.

Section 3 sets forth amendments to the Atomic Energy Act of 1954 (42 U.S.C. section 2011 et seq.) and adds a new section dealing with fingerprinting for security clearance.

Section 3(a) would mandate that any entity licensed to operate a utilization facility commercially, under 42 U.S.C. section 2133, or to operate industrially and commercially, under 42 U.S.C. section 2134(b), must require that anyone allowed unescorted access to the nuclear facility is to be fingerprinted, with those fingerprints being submitted to the Attorney General for identification and a criminal history record check. The mandate on the part of the licensee is in force irrespective of who employs the individual having unescorted access.

The subsection would also authorize the Attorney General to provide all resuts of such fingerprint checks to the person designated by the Commission in consultation with the Attorney General.[5] The subsection also would require that the licensee will bear the cost of the criminal records check, thereby ensuring that the bill will not create a burden to the taxpayer.

The subsection grants rulemaking authority to the Nuclear Regulatory Commission to waive the requirements of this legislation under conditions, terms, and for periods that the Commission finds consistent with its responsibilties "to promote the common defense and security and to protect the health and safety of the public." The Committee is of the view that this exception be used only inextraordinary circumstances.

Finally, section 3(a) directs the Commission to prescribe regulations for the taking of fingerprints and for establishing the conditions for both using the information and limiting the redissemination of the information provided by the record check in a manner limited to the purposes contained in the Act. The legislation gives discretion to the Commission to implement a practical program, through regulation, for carrying out the purposes of this act. Because of the possible incompleteness of the FBI's criminal history records mentioned earlier in the report and because of the important due process and privacy interests of prospective employees, the Commitee believes that the regulations prescribed by the Commission shall contain the following minimum requirements:

(1) Individuals who are asked to submit fingerprints under the program will be notified that the fingerprints will be used to run a criminal history records check through the FBI;

(2) Individuals who are subject to fingerprinting will be provided with an opportunity to complete and correct the information contained in the FBI's criminal history records prior to any adverse job action being taken; and

(3) The Commission will establish procedures to ensure that the information provided to the plant operator will only be used to determine whether the person is fit to be given unescorted access to the nuclear facility, and for no other purpose.

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[5] The bill is silent as to what agency will function as the clearinghouse to submit the fingerprints and receive the results of the search. However, during the June 13, 1984, hearing before the Subcommittee on Security and Terrorism, Mr. Donald B. Mausshardt, Deputy Director, Office of Nuclear Materials and Safeguards, testified that the Commission was considering using Edison Electric Institute to assist in the management of the process. (J-98-123, June 13, 1984.)

The Committee notes that the Commission has raised certain concerns about allowing their licensees access to old arrest records that are not accompanied by dispositional data. In a July 26, 1985 letter from Herzel H.E. Plaine, General Counsel of the Commission, to Senator Denton, the Commission expressed the view that ". . . such information often suffers deficiencies in its accuracy, reliability and probative value and could improperly influence employment decisions." While the Committee believes that old arrest records that are not accompanied by dispositional data may have some value in determining employment suitability, the Committee expects the Commission to address this issue, in consultation with DOJ when it promulgates implementing regulations pursuant to section 3(a). In light of the nature of this particular issue, the Committee anticipates that the Commission will accord substantial weight to the views of DOJ when promulgating such regulations.

Section 3(b) provides that the bill will go into effect upon promulgation of the regulations referred to in section 3(a) or by January 1, 1986.

VIII. Agency Views

U.S. Nuclear Regulatory Commission,
Washington, DC, March 4, 1985.

Hon. Jeremiah Denton,
Chairman, Subcommittee on Security and Terrorism, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Mr. Chairman: Preserving and enhancing the security of nuclear facilities is an important objective. The Commission strongly supports enactment of S. 274 as a means of enhancing nuclear reactor licensee efforts to reduce the potential for reactor sabotage by improving employee screening programs. The Commission does suggest, however, that certain modifications be made to S. 274. We note that there are two principal differences between S. 274 and the draft bill which the Commission proposed last June during hearings on S. 2470. The Commission continues to prefer its language (which is enclosed) for the reasons set forth below. The Commission will also be submitting its preferred language to Congress as a separate legislative proposal.

The Commission prefers that use of the authorization in the legislation become effective only upon NRC promulgation of implementing regulations. Under S. 274 the fingerprinting requirement would become effective upon enactment of the legislation and the Commission would be allowed to exempt individuals from that requirement by rulemaking. Under our preferred approach the fingerprinting requirement would not become effective until the Commission had promulgated regulations implementing the legislation. Because S. 274 is broad, rather than prescriptive legislation, effective implementation of the legislation requires promulgation of regulations setting forth detailed procedures regarding the submittal of fingerprints and the dissemination of information by the FBI. We believe the provisions of the act should not become effective in the absence of regulations. The Commission recognizes that rulemaking takes time but believes that implementing regulations will create less confusion. We note that the NRC staff has already pre-

pared a portion of the necessary regulations as part of a proposed insider safeguards rule.

The Commission also recommends that S. 274 provide that licensees not be given access to arrest records more than one year old unless the records are accompanied by dispositional data. The Commission believes that such information often suffers deficiencies in its accuracy, reliability and probative value and could improperly influence employment decisions.

Our recommendation is also consistent with Department of Justice policy and regulations regarding the dissemination of criminal history record information for employment and licensing purposes to private entities.

Sincerely,

NUNZIO J. PALLADINO.

Enclosure: NRC Suggested Language.

"FEDERAL CRIMINAL HISTORY RECORDS"

"SEC. 112. The Commission may by rule require each applicant for, or holder of a production facility license or a utilization facility license pursuant to sections 103 or 104b, to develop and maintain a program whereby individuals to be allowed unescorted access to designated areas of the facility are fingerprinted and the fingerprints submitted to the Attorney General of the United States, through a person or persons designated by the Commission in consultation with the Attorney General, for identification and appropriate processing. The applicant for or holder of the license may receive from the Attorney General the results of such search except for arrest data more than one year old not accompanied by dispositions. The Commission may prescribe regulations to establish the conditions for use of the information received from the Attorney General and to limit its redissemination."

(b) The Table of Contents of the Atomic Energy Act of 1954, as amended, is amended by adding:

"Sec. 112. Federal Criminal History Records."

U.S. NUCLEAR REGULATORY COMMISSION,
Washington, DC, May 7, 1985.

Hon. JEREMIAH DENTON,
Chairman, Subcommittee on Security and Terrorism, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Nuclear Regulatory Commission has asked me to reply to your letter of April 23, 1985, concerning the revision of your bill S. 274, 99th Congress, for providing improved security protection for nuclear facilities.

The Commission is of the view that the revision is acceptable, and supports adoption of the bill.

Sincerely,

HERZEL H.E. PLAINE,
General Counsel.

U.S. NUCLEAR REGULATORY COMMISSION,
Washington, DC, July 26, 1985.

Hon. JEREMIAH DENTON,
Chairman, Subcommittee on Security and Terrorism, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Preserving and enhancing the security of nuclear facilities is an important objective. The Commission is pleased to offer its support of S. 274, as most recently marked up at the July 23, 1985 meeting of the Senate Subcommittee on Security and Terrorism. The Commission sees this bill as a keystone enhancing the efforts of nuclear reactor licensees to reduce the potential for reactor sabotage by improving employee screening programs. The Commission appreciates the efforts of your staff in incorporating many of our comments and recommendations into the bill.

The Commission has expressed certain reservations about licensee access to old arrest records that are not accompanied by dispositional data. The Commission believes that such information often suffers deficiencies in its accuracy, reliability and probative value and could improperly influence employment decisions. While current versions of S. 274 contain no legislative limitation on licensee use of arrest records, or legislative requirement that the Commission issue regulations limiting licensee use of such records, the Commission would still address this issue, in consultation with the Department of Justice, in rulemaking authorized by section 161 of the Atomic Energy Act. With the understanding that this sensitive matter can be addressed in rulemaking, the Commission does not object to the absence of legislative limitation in the current S. 274.

Sincerely,

HERZEL H.E. PLAINE,
General Counsel.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, September 4, 1985.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is with further reference to our report of July 24, 1985, concerning S. 274, a bill "To provide for the national security by allowing access to certain Federal criminal history records." Our report expressed general support for S. 274 but noted several concerns with the bills as introduced.

We have now reviewed S. 274 as reported by Subcommittee and note that all the concerns we expressed on July 24 have been accommodated by amendments to the bill. It is a pleasure to be able to report, therefore, that the Department of Justice endorses without qualification S. 274 as reported by Subcommittee and that we recommend enactment of this bill as amended.

Sincerely,

PHILLIP D. BRADY,
Acting Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, September 24, 1985.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: By letter dated May 1, 1985, you transmitted a copy of S. 274 to the Department of Justice (DOJ) and requested that the DOJ provide comments on the bill to your Committee.

S. 274 recognizes the potential for harm to the national security if an individual having access to nuclear power facilities and nuclear materials should abuse such access. To diminish such potential for harm or damage, the bill provides for a screening procedure for those having unescorted access to nuclear power facilities. Thus, the bill proposes amending the Atomic Energy Act of 1954 to add a new Section 149. This Section provides that every person licensed or in the process of being licensed to operate a utilization facility pursuant to certain sections of the Act shall require that each individual allowed unescorted access to the facility be fingerprinted. These fingerprints shall be submitted to the Attorney General through a person or persons designated by the Nuclear Regulatory Commission (NRC) in consultation with the Attorney General for identification and appropriate processing. The NRC by rule may relieve persons from the obligations of this requirement if such action is consistent with the NRC's responsibilities.

This language is similar to other laws which permit the DOJ to perform identification checks for certain individuals in sensitive areas. These checks are handled by the FBI's Identification Division. For example, under Section 14(f) of Public Law 94-29, every member of a national securities exchange, broker, dealer, etc., is required to submit fingerprints of its partners, directors, officers, and employees to the Attorney General for identification and appropriate processing. Further Section 233 of Public Law 97-444 provides that each commodities futures association must require applicants to be fingerprinted and must submit the fingerprints to the Attorney General for identification and appropriate processing. The DOJ believes that the interest of the NRC in insuring the security of its facilities merits a law giving them the ability to screen certain individuals having unescorted access to the facilities by requiring such individuals to undergo a criminal history record check by the FBI's Identification Division.

Although the DOJ supports the intent of this bill, we have identified one concern with the proposed new Section 149 (Subsection a) of the Atomic Energy Act. The second sentence of this Subsection provides that all fingerprints obtained by a licensee shall be submitted to the Attorney General through a person or persons designated by the NRC in consultation with the Attorney General. This language, by providing for a channeling agency or authority, recognizes the large administrative burden which would be placed on the FBI if it had to determine whether each individual licensee was an appropriate party to make a record check request. In adopting this language, the channeling agency would assume the adminis-

trative burden of approving the requests of the licensees, and protecting against misuses of the criminal history information. (This procedure is similar to that used by the securities and commodities future industries.)

While the bill establishes the channeling agency for submission of the fingerprint cards, it ignores this entity when it addresses who should receive the criminal history information. In the last sentence of this Subsection, the applicant for or holder of the license is authorized to receive the results of the criminal history record search. The DOJ objects to this language which restricts to whom the DOJ can furnish the record. The language ignores the existence of the channeling authority which would be funneling the fingerprints to the Attorney General but would be precluded from receiving the records. At this time, the DOJ cannot speculate as to whether it would be more efficent and less burdensome on the FBI to have the channeling authority or the licensees and potential licensees receive the record information. Therefore, the DOJ recommends that the language be changed to allow the NRC, in consultation with the Attorney General, to make the determination as to whom the record check shall be sent. In view of the above, the DOJ suggests that the last sentence substituted in its place:

"The Attorney General may provide all the results of the search, notwithstanding any other provision of law, to such person or persons as designated by the Commission in consultation with the Attorney Generai."

In addition to the above, the DOJ recommends that Section 2 of the bill which sets forth the findings of the Congress be modified to clarify the role of the FBI in assisting the NRC. The third finding states that:

"Ths Federal Bureau of Investigation should assist in screening persons who have access to nuclear facilities and materials."

To be consistent with the remainder of the bill, this finding should be revised to provide that:

"The Department of Justice should assist in screening persons who have access to nuclear facilities and materials by providing criminal history record checks."

The DOJ recommends enactment of this legislation if amended as suggested above. The Office of Management and Budget has advised DOJ that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

PHILLIP D. BRADY,
Acting Assistant Attorney General,
Office of Legislative and Intergovernmental Affairs.

IX. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), Rule XXVI of the Standing Rules of the Senate, the Committee anticipates no significant impact on existing regulatory requirements.

The Committee expects S. 274 to apply fingerprinting requirements to about 90 existing nuclear power plants and 20 to 30 plants under construction. The Committee expects the Nuclear

Regulatory Commission to identify which of the 500 to 600 persons usually required to operate these facilities will have unescorted access to the nuclear power facility.

X. Cost of the Legislation

In accordance with paragraph 11(a), Rule XXVI, Standing Rules of the Senate, the Committee offers the following report of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 13, 1985.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 274, the Nuclear Power Plant Security and Anti-terrorism Act of 1985, as ordered reported by the Senate Committee on the Judiciary, September 12, 1985. This bill requires fingerprinting and a criminal history records check of each individual being licensed for unescorted access to nuclear power facilities. Because the bill directs the licensee to pay any costs associated with the identification and records check, we expect that no additional cost to the federal government or to state or local governments will be incurred as a result of enactment of this legislation.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Eric Hanushek,
(For Rudolph G. Penner, Director).

XI. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by S. 274 are shown as follows: Existing law to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

The Atomic Energy Act of 1954

An Act For the development and control of atomic energy

ATOMIC ENERGY ACT OF 1954

Chapter 12. Control of Information

Sec.

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148. Prohibition Against the Disclosure of Certain Unclassified Information.
149. Fingerprinting for security clearance.

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CHAPTER 12. CONTROL OF INFORMATION

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SEC. 148. PROHIBITION AGAINST THE DISSEMINATION OF CERTAIN UNCLASSIFIED INFORMATION.—

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e. The Secretary shall prepare on a quarterly basis a report to be made available upon the request of any interested person, detailing the Secretary's application during that period of each regulation or order prescribed or issued under this section. In particular, such report shall—

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(3) provide justification that the Secretary has applied such regulation or order so as to protect from disclosure only the minimum amount of information necessary to protect the health and safety of the public or the common defense and security.

SEC. 149. FINGERPRINTING FOR SECURITY CLEARANCE.—

a. Every person in the process of being licensed or licensed pursuant to section 104 or 104b to operate a utilization facility shall require that each individual allowed unescorted access to the facility be fingerprinted. All fingerprints obtained by a licensee as required in the preceding sentence shall be submitted to the Attorney General of the United States through a person or persons designated by the Commission in consultation with the Attorney General for identification and a criminal history records check. The costs of any identification and records check conducted pursuant to the preceding sentence shall be paid by the licensee. Notwithstanding any other provision of law, the Attorney General may provide all the results of the search to such person or persons as designated by the Commission in consultation with the Attorney General.

b. The Commission, by rule, may relieve persons from the obligations imposed by this section, upon specified terms, conditions, and periods, if the Commission finds that such action is consistent with its responsibilities to promote the common defense and security and to protect the health and safety of the public.

c. For purposes of administering this section, the Commission shall prescribe regulations to—

(1) implement procedures for the taking of fingerprints;

(2) establish the conditions for use of information received from the Attorney General in order to—

(A) limit the redissemination of such information; and

(B) assure that such information is used solely for the purposes provided in this section; and

(3) provide individuals subject to fingerprinting the right to complete and correct information contained in the criminal history records prior to any final adverse action.

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